

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~

NEW LANGUAGE: Underline

(O-2006-xx)

ORDINANCE NUMBER O-_____ (NEW SERIES)

ADOPTED ON _____

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 7, DIVISION 29 OF THE SAN DIEGO MUNICIPAL CODE BY REPEALING SECTIONS 27.2915 AND 27.2974, AND BY AMENDING SECTIONS 27.2903, 27.2916, 27.2921, 27.2930, 27.2938, 27.2945, 27.2950, 27.2955, 27.2956, 27.2965, 27.2969, 27.2970, 27.2971, 27.2972, 27.2975, AND 27.2976, AND BY ADDING NEW SECTIONS 27.2974 AND 27.2980, ALL RELATING TO THE CITY OF SAN DIEGO ELECTION CAMPAIGN CONTROL ORDINANCE

§27.2903 Definitions

Unless otherwise defined in this section, or the contrary is stated or clearly appears from the context, the definitions of the Political Reform Act of 1974 (Government Code sections 81000 *et seq.*) and the definitions contained in the regulations adopted by the Fair Political Practices Commission shall govern the interpretation of this division.

Agent to City Official [no change in text]

Clearly identified candidate means a *candidate* who is identified in a communication by name, by an unambiguous reference to the *candidate's* office or status as a *candidate*, or by any other unambiguous description. A *candidate* is also clearly identified if a communication contains the voice or a visual depiction of the *candidate*.

Clearly identified measure means a measure that has qualified to be placed on the ballot and that is identified in a communication by a proposition number, official title, or popular name associated with the measure. A measure is also clearly identified if a communication refers to the subject matter of the measure and either states that the measure is before the people for a vote or, taken as a whole and in context, unambiguously refers to the measure. A measure that has not qualified to be placed on the ballot is clearly identified if a communication refers to the subject matter of the measure and to the qualification drive.

Committee [no change in text]

Contribution has the same meaning as that term is defined in California Government Code section 82015 and is subject to the inclusions and exceptions contained in title 2, section 18215 of the California Code of Regulations, except as modified by the following provisions. In the event of any conflict between the state law definition and the following provisions, the following provisions shall control:

(a) through (b) [no change in text]

(c) *contribution* does not include a *payment* made for ~~*internal*~~ *member* *communications*.

Controlled committee to Election [no change in text]

Electioneering communication means any form of communication that mentions or refers to a clearly identified candidate, but does not expressly advocate the nomination, election, defeat, or recall of the candidate, and that is disseminated, broadcast, or otherwise published within 60 calendar days of an election for which the

candidate is on the ballot.

Elective City office to Enforcement Authority [no change in text]

Expenditure means a *payment*, a forgiveness of a loan, a *payment* of a loan by a third party, or an enforceable promise to make a *payment*, unless it is clear from the circumstances that it is not made for *political purposes*. An *expenditure* is made on the date the *payment* is made or on the date consideration, if any, is received, whichever is earlier. An *expenditure* does not include a *payment* for ~~*internal*~~ *member communications*, nor does it include costs incurred for communications advocating the nomination, election, or defeat of a *candidate* or the qualification, passage, or defeat of a *measure* by a federally regulated broadcast outlet or by a regularly published newspaper, magazine, or periodical of general circulation that routinely carries news, articles, or commentary of general interest.

General purpose recipient committee [no change in text]

Independent expenditure means any *expenditure* made by any *person* in connection with a communication that:

- (a) expressly ~~supports or opposes~~ advocates the nomination, election, defeat, or recall of a ~~clearly identified candidate~~ clearly identified candidate; or
- (b) expressly ~~supports or opposes~~ advocates the qualification ~~for the ballot,~~ adoption, passage, or defeat of a ~~clearly identified measure~~ clearly identified measure; or
- (c) taken as a whole and in context, unambiguously urges a particular result in a *City election*.

An *expenditure* that is made to or at the behest of a *candidate* or a *controlled committee* is not an *independent expenditure*.

~~*Internal communication* means communications directed solely to members, employees, or shareholders of an organization, including communications to members of any political party, for the purpose of supporting or opposing a *candidate* or *candidates* for *elective City office*, specifically not to include communication activities used in connection with broadcasting, newspaper, billboard or similar type of general public communication. The meaning of *internal communication* is intended to be consistent with the definitions contained in California Government Code section 85312 and title 2, section 18531.7 of the California Code of Regulations. Any amendments made to these authorities shall be deemed to be an amendment to the language of this definition.~~

~~*Mass mailing* means more than 200 substantially similar pieces of campaign literature sent within a single calendar month.~~

Mass campaign literature means more than 200 substantially similar pieces of campaign literature, including, but not limited to, mailers, flyers, pamphlets, door hangers, walking cards, posters, yard signs, business cards, campaign buttons 10 inches in diameter or larger, or bumper stickers 60 square inches or larger, which are distributed within a single calendar month, regardless of whether distributed through the mail, by campaign workers, or any other means. *Mass campaign literature* does not include pens, pencils, or other similarly small promotional items on which the disclosures required by this division cannot reasonably be printed or displayed in an

easily legible typeface; wearing apparel; skywriting; communication from an organization to its members, other than a communication from a political party to its members; or any web-based or Internet-based communication.

Measure [no change in text]

Member communication means a communication directed solely to members, employees, or shareholders of an organization, including a communication to members of any political party, for the purpose of supporting or opposing one or more City measures or candidates for elective City office. Member communications do not include communications made by an organization for general public advertising such as broadcasting, billboards, and newspaper advertisements, or for communications to persons who are not members, employees, or shareholders, or families of members, employees, or shareholders of the organization. The meaning of member communication is intended to be consistent with the definitions contained in California Government Code section 85312 and title 2, section 18531.7 of the California Code of Regulations. Any amendments made to these authorities shall be deemed to be an amendment to the language of this definition.

Payment to primarily formed recipient committee [no change in text]

Professional fees and costs means expenses related to the retention of an attorney, treasurer, fundraiser, or any other person retained to perform services reasonably related to the purpose for which a legal defense fund is created.

Shared management to vendor [no change in text]

~~§27.2915 Campaign Contribution Checking Account for Ballot Measure Committees~~

~~Every committee that accepts contributions for the purpose of supporting or opposing a City of San Diego measure shall deposit such contributions in a campaign contribution checking account located at an office of a bank or other financial institution providing checking account services located in the City of San Diego, and shall make all expenditures supporting or opposing the measure from that account.~~

§27.2916 Campaign Contribution Checking Account for Controlled Committees

- (a) Every *controlled committee* that accepts *contributions* and every primarily formed recipient committee shall establish one campaign ~~contribution~~ checking account at an office of a bank or other financial institution providing checking account services located in the *City* of San Diego.
- (b) Upon opening of an account, the name of the bank or other financial institution and account number thereof shall be filed with the *City Clerk* on the same forms and in the time and manner required by California Government Code sections 81000 *et seq.*
- (c) All *contributions* of money or checks, or anything of value converted by such ~~controlled~~ *committee* to money or a check, shall be placed in the ~~controlled~~ *committee's* checking account within thirty business days, except that no *contribution* shall be deposited to a campaign *contribution* checking account without the receipt by the ~~controlled~~ *committee* of all information required by California Government Code section 84211. Any information that has not been provided shall be requested, in writing, by the campaign *treasurer* within ten business days of receipt of the money or check.

- (d) Any *contribution* not deposited within thirty business days shall be returned to the contributor as soon as possible after the thirtieth business day, but no later than thirty-five business days after receipt of the *contribution*.

§27.2921 Carryover of Contributions

- (a) Notwithstanding subdivision (a) of section 27.2920, a *candidate* for *elective City office* may carry over contributions raised in connection with one *election* for *elective City office* to pay campaign expenditures incurred in connection with a subsequent *election* for the *same elective City office*.
- (b) It is the intent of this section that the carrying over of a *candidate's* campaign funds be generally consistent with the provisions of law set forth in title 2, section 18537.1 of the California Code of Regulations.
- (c) Nothing in this section shall be interpreted to permit a *candidate* to use *contributions* collected for a *district* or *citywide general election* to pay *campaign expenditures* incurred in connection with an earlier *district* or *citywide primary election*, or for *contributions* collected for a *special run-off election* to pay *campaign expenditures* incurred in connection with an earlier *special election*.

§27.2930 Base Level of Campaign Statements and Disclosures

Each *candidate* and *committee* shall file campaign statements in the time and manner required by California Government Code sections 81000 *et seq.* and title 2 of the California Code of Regulations with the following additional requirements:

- (a) through (c) [no change in text]
- (d) Any payment made by a political party for ~~*internal*~~ *member* *communications* to

its members who are registered with that party and that would otherwise qualify as a *contribution* or *expenditure* shall be reported on that political party's campaign disclosure statement in a manner that identifies the payment as ~~an~~ ~~"internal communication."~~ a "member communication."

- (e) [no change in text]
- (f) When reporting *contributions* for regularly scheduled City candidate elections, *candidates* and *committees* shall include the notation "(P)" for all *contributions* that the contributor has designated for a primary *election*, and shall include the notation "(G)" for all *contributions* that the contributor has designated for a general *election*. In instances where the contributor has not designated his or her *contribution* for a particular *election*, the *candidate* or *committee* shall include the notation "(P)" for all *contributions* the *candidate* or *committee* has allocated for the primary *election*, and shall include the notation "(G)" for all *contributions* the *candidate* or *committee* has allocated for the general *election*.
- (g) When reporting contributions for specially scheduled City candidate elections, candidates and committees shall include the notation "(S)" for all contributions that the contributor has designated for a special election, and shall include the notation "(R)" for all contributions that the contributor has designated for a special run-off election. In instances where the contributor has not designated his or her contribution for a particular election, the candidate or committee shall include the notation "(S)" for all contributions the candidate or committee has allocated for the special election, and shall include the notation "(R)" for all contributions the candidate or committee has allocated for the special run-off

election.

~~(g)~~(h) *Sponsors and sponsored committees* participating in *City elections* are subject to the reporting obligations set forth in title 2, section 18419 of the California Code of Regulations.

~~(h)~~(i) It is unlawful to fail to comply with the disclosure requirements of California Government Code sections 81000 *et seq.*, the disclosure requirements of title 2 of the California Code of Regulations, and the additional requirements of this section.

§27.2938 Restrictions on Time Period of Contributions

(a) through (d) [no change in text]

(e) The restrictions on accepting *contributions* imposed by subsection (a) do not apply to *contributions* for recall elections, or for elections occurring in 2006.

§27.2945 Notification Regarding Reimbursement Prohibition

(a) It is unlawful for any *candidate*, or any *committee* supporting or opposing a *candidate*, to solicit *contributions* from potential contributors by distributing printed materials or using an Internet web site unless such materials or site contain at least one instance of the following statement in a prominent place printed in ~~contrasting~~ typeface that is easily legible, contrasts with the background, and is not smaller than the typeface used in a majority of the text in the materials or on the site: “It is unlawful for a contributor to be reimbursed by any organization, business, or similar entity for a contribution supporting or opposing a City candidate.”

(b) [no change in text]

§27.2950 Prohibitions and Limits on Contributions from Organizations

- (a) It is unlawful for a *candidate* or *controlled committee*, or any *treasurer* thereof, or any other *person* acting on behalf of any *candidate* or *controlled committee*, to solicit or accept a *contribution* from any *person* other than an individual for the purpose of supporting or opposing a candidate for elective City office.
- (b) It is unlawful for a *person* other than an individual to make a *contribution* to a *candidate* or *controlled committee* for the purpose of supporting or opposing a candidate for elective City office.
- (c) [no change in text]
- (d) The prohibitions in subsections (a) through (c) shall not be construed to prevent a *person* other than an individual from making a *contribution* to a ~~*primarily formed-recipient*~~ *committee* that is organized solely for the purpose of supporting or opposing the qualification of a *City measure* for the ballot, or the adoption or defeat of a *City measure*, and the ~~*primarily formed-recipient*~~ *committee* pursues no other purpose.
- (e) through (h) [no change in text]

§27.2955 Obligation to Return Contributions

- (a) [no change in text]
- (b) Except as set forth in ~~section~~ sections 27.2943 and 27.2956, if a *candidate*, *committee*, or *committee treasurer* receives a monetary *contribution*, the acceptance of which would constitute a violation of this division, neither the *candidate*, *committee*, nor *committee treasurer* shall be subject to any penalty

for receipt of that *contribution* if the *candidate, committee, or committee treasurer*:

- (1) does not deposit the *contribution* into the campaign *contribution* checking account; and,
- (2) returns the *contribution* to the contributor ~~before the end of the filing deadline for the reporting period in which~~ within thirty business days of the calendar day the *contribution* was received.

- (c) Except as set forth in section 27.2956, ~~If~~ if a *candidate, committee, or committee treasurer* deposits into the campaign *contribution* checking account a monetary *contribution*, the acceptance of which constitutes a violation of this division, the *candidate, committee, or committee treasurer* shall within ten calendar days of the date of the *candidate's, committee's, or committee treasurer's* discovery of the violation provide in writing to the *City Clerk* all facts pertaining to the *contribution*, including but not limited to: (1) a copy of any check(s), draft(s), or other instrument(s) by which the *contribution* was made; and (2) if made in cash, a report of the amount and denominations of currency tendered and a legible photocopy of the bank deposit slip; and (3) if by wire or other electronic fund transfer, a legible printout or photocopy of the transaction; and (4) a report of the means of tender, delivery, or confirmation of the *contribution* (e.g. U.S. Postal Service or private mail, courier service, in person); and (5) a report of the full name and street address of the contributor.

- (d) [no change in text]

§27.2956 Return of Contributions - Mistaken Identity

If a candidate, committee, or committee treasurer receives a contribution that exceeds the contribution limits set forth in this division, neither the candidate, committee, nor committee treasurer shall be subject to any penalty or obligation under section 27.2955 for receipt of that contribution if all of the following circumstances are present:

- (a) the candidate, committee, or committee treasurer received more than one contribution from the same contributor for the same election; and
- (b) variations in the spelling of the contributor's name reasonably resulted in confusion regarding the contributor's identity; and
- (c) the candidate, committee, or committee treasurer returned the contribution to the contributor before the end of the filing deadline for the reporting period in which the contribution was received.

§27.2965 Legal Defense Fund

- (a) [no change in text]
- (b) In addition to *contributions* received in connection with seeking an elective *City* office, any elected *City Official* or *candidate* for *elective City office* may receive *contributions* from individuals for a legal defense fund, and may use such *contributions* solely for the following purposes:
 - (1) to defray ~~professional fees and costs~~ professional fees and costs incurred in the *City Official's* or *candidate's* response to an audit of his or her campaign activity conducted by the City of San Diego Ethics Commission or the California Fair Political Practices Commission; or

- (2) to defray ~~attorney's fees and other legal costs~~ professional fees and costs incurred in the City Official's or candidate's legal defense to one or more civil, criminal, or administrative proceedings arising directly out of the conduct of an election campaign, the electoral process, or the performance of the City Official's governmental activities and duties.

(c) through (g) [no change in text]

§27.2969 Termination of Legal Defense Fund

- (a) Within six months after the conclusion of the audit or of any lawsuits or proceedings for which the legal defense fund was established or maintained, the *City Official* or *candidate* may dispose of any remaining funds in the legal defense fund as follows:
- (1) by paying outstanding ~~legal costs~~ professional fees and costs incurred in the defense of any proceeding identified in the Statement of Purpose; or,
- (2) by repaying the contributors on a ~~pro-rata~~ "last in, first out" or "first in, first out" accounting basis; or,
- (3) by making the funds payable to the City Treasurer for deposit in the General Fund of the *City*.

(b) [no change in text]

§27.2970 ~~Mass Mailings~~ Mass Campaign Literature

- (a) ~~It is unlawful for any candidate or committee to send a mass mailing for the purpose of supporting or opposing a City candidate or City measure unless:~~
- (1) ~~the name, street address, and city of the candidate or committee sending the mailing are shown on the outside of each piece of mail in the mass~~

~~*mailing* in a typeface that is easily legible, contrasts with the background, and is no less than 12 points in size; and~~

~~(2) each mailing includes the words “paid for by” immediately followed by the name, street address, and city of that *candidate* or *committee* in a typeface that is easily legible, contrasts with the background, and is no less than 12 points in size.~~

- (a) It is unlawful for any *candidate* or *committee* to pay for *mass campaign literature* for the purpose of supporting or opposing a *City candidate* or *City measure* unless each item of *mass campaign literature* includes the words “paid for by” immediately followed by the name, street address, and city of that *candidate* or *committee* in a typeface that is easily legible, contrasts with the background, and is no less than 12 points in size.
- (b) In addition to the requirements set forth in subsection (a) it is unlawful for any *candidate* or *committee* to send *mass campaign literature* through the mail for the purpose of supporting or opposing a *City candidate* or *City measure* unless the name, street address, and city of the *candidate* or *committee* are shown on the outside of each item of *mass campaign literature*, and on at least one of the inserts included within each piece of mail, in a typeface that is easily legible, contrasts with the background, and is no less than 12 points in size.
- (1) If the sender of the *mass campaign literature* is a single *candidate* or *committee*, the name, street address, and city of the *candidate* or *committee* need only be shown on the outside of each item being mailed.

(2) If more than one *committee* pays to mail the *mass campaign literature*, only the name, address, and city of the *committee* paying the largest portion of the costs of designing, printing, and mailing the mailer need be shown on the outside of the mailer, and the names of all of the *committees* paying for the mailer shall be shown on at least one of the inserts included within the mailer.

~~(b)(c)~~ For purposes of ~~subsection (a)~~ this section, ~~a~~ an organization's post office box may be stated in lieu of a street address if ~~the~~ that organization's address is a matter of public record with the Secretary of State.

~~(e)(d)~~ If the sender of a *mass mailing* is a *controlled committee*, a *controlled committee* pays for *mass campaign literature*, the name of the candidate controlling the *committee* shall be included in addition to the information required by ~~subsection (a)~~ this section.

~~(e)~~ The requirements set forth in this section do not apply to *member communications* distributed by an organization that is not a political party, e-mail communications, Internet web pages, or slate mailers.

§27.2971 Telephone Communications

(a) through (e) [no change in text]

~~(f)~~ The disclosure requirements set forth in this section shall apply to any *candidate* or *committee* paying for any of the resources used for the telephone communication, including purchasing a contact list, developing a script, paying for overhead, or incurring telephone charges, even if a volunteer records or makes the call.

- (g) The disclosure requirements set forth in this section shall not apply to:
- (1) a candidate personally engaging in a live telephone communication, or
 - (2) member communications made by an organization that is not a political party.

§27.2972 Billboard Advertising

- (a) It is unlawful for any *candidate* or *committee* to place any advertising on a billboard for the purpose of ~~participating in a City election campaign~~ supporting or opposing one or more City measures or candidates for elective City office unless the communication includes the words “paid for by” followed by the name of that *candidate* or *committee*.
- (b) [no change in text]

~~§27.2974 Independent Expenditures Supporting a Candidate~~

- (a) ~~It is unlawful for any committee making an independent expenditure to pay for an advertisement supporting or opposing a City candidate unless the advertisement includes the words “paid for by” followed by the name of that committee.~~
- (b) ~~Any disclosure statement required by this section shall be printed clearly and legibly in type that contrasts with the background and is no less than 12 points in size, or, if the communication is broadcast, the information shall be spoken so as to be clearly audible and understood by the intended public and otherwise appropriately conveyed for the hearing impaired.~~
- (c) ~~The provisions of subsections (a) and (b) do not apply to advertisements that are internal communications, or to advertisements that are made through e-mail~~

~~communication or by placement on a slate mailer.~~

- (d) ~~It is unlawful for a *candidate's controlled committee* to make independent expenditures, or otherwise contribute funds to any other *committee*, for the purpose of supporting or opposing a *City candidate*.~~

27.2974 Disclosure on Advertisements in Mass Media

- (a) It is unlawful for any *candidate* or *committee* to pay for advertising in a regularly published newspaper, periodical, or magazine of general circulation, or on any Internet web page, for the purpose of supporting or opposing one or more *City measures* or *candidates* for elective *City* office unless the advertisement includes the words "paid for by" followed by the name of that *candidate* or *committee*.
- (b) The disclosure statement required by subsection (a) shall be in a typeface that is easily legible, contrasts with the background, and is no less than 12 points in size.

§27.2975 Expenditures Supporting Ballot Measures

- (a) In addition to all other applicable disclosure requirements set forth in this division, it ~~It is unlawful for any *candidate* or *committee* to place an advertisement supporting or opposing a ballot *measure* unless the advertisement includes:(1) the words "paid for by" followed by the name of that *candidate* or *committee* in a typeface that is easily legible, contrasts with the background, and is no less than 12 points in size; and(2) a disclosure statement identifying any *person* whose cumulative contributions are \$50,000 or more.~~

~~A:~~ (1) If there are more than two donors of \$50,000 or more, the

committee is only required to disclose the highest and second highest in that order.

~~B.~~ (2) In the event that more than two donors meet this disclosure threshold at identical contribution levels, the highest and second highest shall be selected according to the order in which the contributions were made.

(b) The provisions of this section do not apply to advertisements that are ~~internal member communications, made by a general purpose recipient committee, or to~~ advertisements that are made through an e-mail communication, or by placement on a slate mailer.

§27.2976 Identification of Entities Supporting Ballot Measures

(a) through (b) [no change in text]

(c) Any *committee*, other than a general purpose recipient committee, that supports or opposes a ballot *measure*, shall print or broadcast its name as provided in this section as part of any advertisement or other paid public statement.

(d) [no change in text]

(e) Within 30 days of the designation of the ~~numerical~~ alphabetical order of propositions appearing on the ballot, any *committee* that is primarily formed to support or oppose a ballot *measure*, shall, if supporting the *measure*, include the statement, “a committee for Proposition _____,” or, if opposing the *measure*, include the statement, “a committee against Proposition _____,” in any reference to the *committee* required by law.

§27.2980 Disclosure of Electioneering Communications

- (a) Every *electioneering communication* in printed form shall include the words “paid for by” immediately followed by the name, street address, and city of the *person* who paid for the communication in a typeface that is easily legible, contrasts with the background, and is no less than 12 points in size.
- (b) Every *electioneering communication* in spoken form shall include the words “paid for by” immediately followed by the name of the *person* who paid for the communication in a manner that is clearly audible and at the same general volume and speed as the rest of the communication.
- (c) Any *person* who makes a payment or a promise of payment totaling \$1,000 or more for an *electioneering communication* shall file with the *City Clerk* an “Electioneering Communication Disclosure Report” disclosing the *person’s* name, address, occupation, and employer, and the amount of the payment. The report shall be filed within 24 hours of making the payment or the promise to make the payment, and shall be accompanied by a legible copy of the *electioneering communication* if in printed form or a transcript of the *electioneering communication* if in spoken form.
- (d) Except as provided in subsection (e), if any *person* has received a payment or a promise of a payment from another *person* totaling \$100 or more for the purpose of making an *electioneering communication*, the *person* receiving the payments shall disclose on the report the other *person’s* name, address, occupation, and employer; the amount received; and the date of the payment.
- (e) A *person* who receives or is promised a payment that is otherwise reportable

under subsection (d) is not required to report the payment if the *person* provides goods or services in the normal course of business and receives or is promised the payment in exchange for providing goods or services.

(f) The communications subject to the provisions of this section do not include:

- (1) news stories and editorials by broadcast outlets or regularly published newspapers, periodicals, or magazines of general circulation;
- (2) communications that are considered *expenditures* or *independent expenditures* under this division;
- (3) *member communications*, except those made by a political party;
- (4) communications made in the form of a slate mailer;
- (5) communications paid for by a governmental entity;
- (6) communications that occur during a *candidate* debate or forum;
- (7) communications made solely to promote a *candidate* debate or forum made by or on behalf of the *person* sponsoring the debate or forum, provided that such communications do not otherwise discuss the positions or experience of a *candidate*; or
- (8) communications in which a *candidate's* name is required by law to appear and the *candidate* is not singled out in the manner of display.

(g) Any communication, other than a *member communication*, made at the behest of a *candidate* is a *contribution* to that *candidate* and is subject to the limits and prohibitions specified in sections 27.2935, 27.2936, and 27.2950.

Or.Dept:Ethics
O-2006-xx